

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CHARLES C. GREEN,

Plaintiff,

-against-

CHAD D. HARBACH,

Defendant.
----- X

**ORDER DENYING
DEFENDANT'S MOTION FOR
ATTORNEY FEES**

17 Civ. 6984 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Defendant moves for attorney fees under 17 U.S.C. § 505.¹ My July 9, 2018 Order and Opinion (ECF No. 26) discusses the parties' contrasting arguments as to whether Defendant's work, *The Art of Fielding*, is substantially similar to Plaintiff's work, *Bucky's 9th*. Although I dismissed the Complaint, I cannot say that the claims and arguments advanced by Plaintiff were objectively unreasonable, frivolous, motivated by improper purposes, or otherwise appropriate for an award of attorney fees. *See Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1985 (2016) (holding that courts deciding whether to award attorney fees under Section 505 should give substantial weight to the objective reasonableness of the losing party's position while also considering other factors, including "frivolousness, motivation, . . . and the need in particular circumstances to advance considerations of compensation and deterrence") (quoting

¹ Section 505 provides:

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

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Fogerty v. Fantasy, Inc., 510 U.S. 517, 534 (1994)). Defendant's motion therefore is denied.

The clerk shall terminate the open motions (ECF Nos. 55, 70).

SO ORDERED.

Dated:

June 13 2019
New York, New York


ALVIN K. HELLERSTEIN
United States District Judge